

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE

v.

AKIM GORDON,

Defendant.

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I.D. No. 2005005984

**ORDER**

Submitted: April 5, 2023

Decided: May 15, 2023

**AND NOW TO WIT**, this 15<sup>th</sup> day of May 2023, upon consideration of Akim Gordon (“Defendant”)’s Motion for Modification/Reduction of Sentence under Rule 35, the sentence imposed upon the Defendant, and the record in this case, it appears to the Court that:

1. On March 28, 2022, Defendant pled guilty to Drug Dealing Cocaine and Conspiracy Second Degree.<sup>1</sup> For the former charge, Defendant was sentenced to five years at Level V, suspended after two years, for transitioning levels of probation, and for the Conspiracy, he received a suspended Level V sentence to one year at Level III.<sup>2</sup>

2. On October 3, 2022, Defendant filed his first Rule 35 motion asking the

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<sup>1</sup> D.I. 10.

<sup>2</sup> D.I. 11.

Court to place him in a DOC program to address his drug addiction.<sup>3</sup> This motion was denied.<sup>4</sup>

3. This second Rule 35 Motion asks that this Court reduce his remaining Level V sentence after he completes “Track 1 of the R2R Program” so that he can support his family affected by his grandmother’s recent death.<sup>5</sup>

4. Under Superior Court Criminal Rule 35(b), the Court may reduce a sentence of imprisonment on a motion made within ninety days after the sentence is imposed.<sup>6</sup> Defendant remains time barred. To overcome the time bar, he must show that “extraordinary circumstances”<sup>7</sup> forgive the tardiness of his Motion.<sup>8</sup> The sole basis for his request to support his family does not constitute extraordinary circumstances.

5. Further, “[t]he court will not consider repetitive requests for reduction of sentence.”<sup>9</sup> A motion is considered repetitive when it “is preceded by an earlier Rule 35(b) motion, even if the subsequent motion raises new arguments.”<sup>10</sup> He

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<sup>3</sup> D.I. 12.

<sup>4</sup> D.I. 13.

<sup>5</sup> D.I. 14.

<sup>6</sup> Del. Super. Ct. Crim. R. 35(b).

<sup>7</sup> The Delaware Supreme Court has defined “extraordinary circumstances” as circumstances which: “‘specifically justify the delay;’ are ‘entirely beyond a petitioner’s control;’ and ‘have prevented the applicant from seeking the remedy on a timely basis.’” *State v. Diaz*, 113 A.3d 1081, 2015 WL 1741768, at \*2 (Del. 2015) (TABLE) (quoting *State v. Lewis*, 797 A.2d 1198, 1203, 1205 (Del. 2002) (Steele, C.J., dissenting)).

<sup>8</sup> See *Colon v. State*, 900 A.2d 635, 638 (Del. 2006) (citations omitted).

<sup>9</sup> Del. Super. Ct. Crim. R. 35(b).

<sup>10</sup> *State v. Culp*, 152 A.3d 141, 144 (Del. 2016).

previously filed in October of 2022.<sup>11</sup> Thus, Defendant's request is barred as repetitive. Rule 35 does not allow the Court to use its discretion to ignore this bar.<sup>12</sup>

6. Defendant's Motion for Modification of Sentence is **SUMMARILY DISMISSED.**

**IT IS SO ORDERED.**

/s/ Vivian L. Medinilla

Vivian L. Medinilla

Judge

oc: Prothonotary  
cc: Defendant  
Department of Justice  
Investigative Services Office

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<sup>11</sup> D.I. 12.

<sup>12</sup> *Culp*, 152 A.3d at 145 (reversing the Superior Court's decision to grant the defendant's motion for modification where the motion was repetitive and untimely).